United Nations S/2000/536

Security Council

Distr.: General
5 June 2000

Original: English

Letter dated 5 June 2000 from the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait addressed to the President of the Security Council

I have the honour to transmit herewith a report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait pursuant to paragraph 10 of Security Council resolution 1281 (1999) (see annex).

The report was approved by the Committee on 5 June 2000.

(*Signed*) A. Peter **van Walsum**
Chairman
Security Council Committee established by resolution 661 (1990)
concerning the situation between Iraq and Kuwait

00-46345 (E) 050600

Annex

Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait on the implementation of the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of resolution 986 (1995)

I. Introduction

1. The present report is submitted to the Security Council pursuant to paragraph 10 of its resolution 1281 (1999) of 10 December 1999, in which the Committee was requested, in close coordination with the Secretary-General, to report to the Security Council prior to the end of the 180-day period on the implementation of the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of resolution 986 (1995). This report, the fourteenth of its kind, covers the Committee's major activities with regard to the implementation of the above arrangements during the second 90-day period of phase VII of the oil-for-food programme after paragraph 1 of resolution 1281 (1999) came into force on 12 December 1999.

II. Sale of petroleum and petroleum products

2. Since the beginning of phase VII the export of petroleum from Iraq has proceeded smoothly, with excellent cooperation among the oil overseer, the independent inspection agents (Saybolt Nederland BV), the Iraqi State Oil Marketing Organization and the national oil purchasers.

3. The overseer continues to advise the Committee on the oil pricing mechanisms, oil contract approval and modifications, management of the revenue objective and other pertinent questions related to export and monitoring under Security Council resolutions 986 (1995), 1175 (1998) and 1281 (1999).

4. As at 31 May 2000, the Committee, acting under the recommendation of the overseer, had reviewed and approved a total of 102 oil contracts for the sale of petroleum in phase VII, involving purchasers from 36 countries. Two previously approved oil contracts during the phase were cancelled, one of which was later reinstated. The total quantity of petroleum approved for export under those contracts is approximately 353 million barrels. In May, the Committee approved 18 amendments to existing contracts totalling 31 million barrels, the execution of which is expected during the initial period of the coming phase in order to avoid an interruption in Iraqi oil exports. All contracts used the pricing mechanisms submitted by the overseer and approved by the Committee.

5. As at 31 May 2000, 263 liftings totalling 326.2 million barrels, worth $7,842 million, had been completed. Approximately 41 per cent of the liftings were made at Ceyhan, Turkey. At current prices the total revenue for phase VII is estimated to be around $8.5 billion, including the pipeline fees, valued at about $200 million. Letters of credit opened for each of the liftings were reviewed and confirmed by the overseer in accordance with the terms and conditions of the approved contracts. A total of 449 letters of credit and amendments were reviewed.

6. The overseer has worked with the independent inspection agents (Saybolt) to ensure the effective monitoring of the relevant oil installations and the liftings. They have received the full cooperation of the Iraqi authorities.

7. Pursuant to paragraph 2 of the procedures of the Committee (S/1996/636), 505 national oil purchasers have been nominated from 70 countries to communicate directly with the overseers.

8. Pursuant to paragraph 14 of the Committee's procedures, the overseer has continued to report once a week on the contracts concerning the sale of petroleum originating in Iraq, including the cumulative quantity and approximate value of petroleum authorized for export. A total of 181 of these reports have been submitted to the Committee.

9. Since 1 July 1999 there has been only one oil overseer. The Committee remains concerned about this situation and is committed to finding a viable solution to the matter as soon as possible.

III. Humanitarian supplies to Iraq

10. During the second 90-day period of phase VII, the Committee continued to attach high priority to the work of processing contracts for the supply of humanitarian goods to Iraq.

11. As at 31 May 2000, the Secretariat had received 1,853 applications under phase VI for exports of humanitarian supplies to Iraq. Of that total, 56 were subsequently cancelled, 1,620 have been circulated to Committee members for action and 154 are still being processed. Of those sent to the Committee for consideration, 1,215 have been found to be eligible for payment from the United Nations Iraq account, totalling approximately $2.24 billion; 10 are still pending under the "no-objection" procedure; and 395 with a total value of $921.2 million have been placed on hold. During the same period of time, the Secretariat received 943 applications under phase VII for exports of humanitarian supplies to Iraq. Of those, 338 have been circulated to Committee members for action and 189 are still being processed. Of those sent to the Committee for consideration, 259 have been found eligible for payment from the United Nations Iraq account, totalling approximately $694.2 million. Fifteen are still pending under the "no-objection" procedure; and 64, with a total value of $127.9 million, have been placed on hold. During the reporting period, 292 contracts were released from hold, with a value of $758.9 million.

12. Pursuant to paragraph 17 of Security Council resolution 1284 (1999) of 17 December 1999, the Committee has approved, on the basis of proposals from the Secretary-General, lists of humanitarian items, including foodstuffs, pharmaceutical and medical supplies and basic or standard medical and agricultural equipment and basic or standard educational items. In accordance with the aforementioned paragraph, supplies of those items will not be submitted for the Committee's approval, except for items subject to the provisions of resolution 1051 (1996), and will be notified to the Secretary-General and financed in accordance with the provisions of paragraph 8 (a) and (b) of resolution 986 (1995). The number of contracts approved during the reporting period totalled 432, with a value of $947.3 million.

13. The work of confirming the arrival of goods carried out by the United Nations independent inspection agents (Cotecna) has continued according to the established procedures at the four entry points, at Al-Walid, Trebil, Umm Qasr and Zakho. As in previous phases, the Iraqi authorities have accorded the independent agents full cooperation in their work. During the second half of phase VII, 5,621 consignments of humanitarian supplies from current and previous phases have been confirmed as having arrived in Iraq in total or in partial shipments.

14. In accordance with the recommendations contained in the letter of the Secretary-General to the President of the Security Council of 22 October 1999 (S/1999/1086), members of the Committee have reviewed humanitarian contracts that have been placed on hold and will continue to do so.

IV. Matters relating to oil spare parts and equipment to Iraq

15. The Committee has made continuous efforts to expedite the approval process for contracts for sending oil spare parts and equipment to Iraq in accordance with existing procedures. On 23 March 2000, the Committee held informal consultations on the issue and invited the oil experts from Saybolt Nederland BV, the independent agents monitoring Iraq's oil exports under Security Council resolution 986 (1995), to brief the Committee on the monitoring of oil spare parts and equipment and on the impact of holds on such contracts.

16. During the period covered by the present report, the Secretariat received 345 new applications valued at $164.2 million to export oil spare parts and equipment to Iraq and circulated 482 applications to the members of the Committee for consideration, including those left from previous resolutions. A total of 285 applications worth $114.7 million have been approved during this period, including 149 applications valued at $58.7 million, which were released from previous holds since the Committee's last report. At the same time, 195 contracts valued at $137.9 million have been placed on hold (with 49 of those, valued at $36.5 million, subsequently released from holds).

17. From the beginning of the process until 31 May 2000, the number of applications received by the Committee to ship oil spare parts and equipment to Iraq under previous resolutions has reached a total of 2,526, with a value of $1,378.3 million. Of these, 2,184 have been circulated to the members of the Committee for consideration; 8 are being reviewed by customs experts awaiting amendments to the distribution plan; 199 have

been returned to the applicant missions for clarification; and 69 have been cancelled. Of the 2,184 applications circulated, 1,651 have been approved, with a total value of $832.9 million; 517 valued at $315.6 million have been placed on hold; and 16 applications are pending under the "no-objection" procedure. As at 25 May, 627 such shipments, worth $287.2 million, had arrived in Iraq in total or in part.

18. Pursuant to paragraph 18 of Security Council resolution 1284 (1999), the Committee has endorsed, in accordance with resolutions 1175 (1998) and 1210 (1998), a group of experts, including independent inspection agents appointed by the Secretary-General in accordance with paragraph 6 of resolution 986 (1995). The group was mandated to speedily approve contracts for the parts and equipment necessary to enable Iraq to increase its exports of petroleum and petroleum products, according to lists of parts and equipment approved by the Committee for each individual project. The Committee is in the process of approving the lists of parts and equipment. Furthermore, members of the Committee approved, on 25 April, the procedures to be employed by the Secretariat in connection with paragraph 18 of Security Council resolution 1284 (1999) concerning the approval of contracts for parts and equipment necessary to enable Iraq to increase its exports of petroleum and petroleum products (see appendix).

19. Members of the Committee have reviewed those contracts for oil parts and equipment that have been placed on hold and will continue to do so, in accordance with the letter of the Secretary-General to the President of the Security Council (S/1999/1086).

V. Other activities

20. The Committee has held eight meetings and several informal consultations at the expert level during the reporting period to discuss various issues related to the implementation of the oil-for-food programme. The Committee considered, *inter alia*, the following issues:

(a) Members of the Committee continue to discuss the humanitarian situation in Iraq, the monitoring undertaken by Saybolt Nederland BV and the observation undertaken by United Nations observers, in accordance with resolution 986 (1995) and related resolutions. In this connection, on 20 March 2000 the Committee received a briefing from Anupama Rao Singh, the representative of the United Nations Children's Fund (UNICEF) in Baghdad, on the humanitarian situation in Iraq in relation to the UNICEF mandate. On 25 April, Benon Sevan, Executive Director of the Office of the Iraq Programme, briefed the Committee on the observation mechanism in Iraq;

(b) In informal consultations, the Committee heard briefings by Ghulam Popal, the representative of the World Health Organization in Iraq, and Amir Khalil, the representative of the Food and Agriculture Organization of the United Nations in Iraq;

(c) Members also received a briefing from the Deputy Executive Secretary of the United Nations Compensation Commission, Michael Rabouin, on the general operations, working methods and policies of the Commission and Mojtaba Kazazi, Chief of the Commission's Governing Council Secretariat, on the guidelines and decision-making process of the Governing Council;

(d) The Committee continued to be seized of the matter of applications placed on hold. As such, members received a briefing by Mr. Sevan on the issue. It was agreed that several expert-level meetings would be convened to discuss the issue using a sectoral approach. The Committee is currently engaged in detailed discussions on holds in all sectors of the distribution plan. So far, the Committee has held two informal consultations on the agriculture and the water and sanitation sectors;

(e) At the request of the Committee, Suzanne Bishopric, Treasurer, representing Joseph Connor, Under-Secretary-General for Management, briefed members on the management of the United Nations Iraq account held with BNP-Paribas and the over-concentration of funds thereof, as raised in the Under-Secretary-General's letter of 12 November 1999.

VI. Conclusion

21. The Committee will continue working closely with the Office of the Iraq Programme and all parties concerned to ensure the effective implementation of the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of resolution 986 (1995). As in the past, the Committee wishes to reiterate its appreciation to all parties concerned for their cooperation and contributions.

Appendix

Procedures to be employed for the implementation of paragraph 18 of Security Council resolution 1284 (1999)

1. The present procedures establish the arrangements for the implementation of paragraph 18 of Security Council resolution 1284 (1999).

2. In its paragraph 18 of resolution 1284 (1999), the Security Council:

> "*Requests* the Committee established by resolution 661 (1990) to appoint, in accordance with resolutions 1175 (1998) and 1210 (1998), a group of experts, including independent inspection agents appointed by the Secretary-General in accordance with paragraph 6 of resolution 986 (1995), *decides*, that this group will be mandated to approve speedily contracts for the parts and the equipment necessary to enable Iraq to increase its exports of petroleum and petroleum products, according to lists of parts and equipments approved by that Committee for each individual project, and *requests* the Secretary-General to continue to provide for the monitoring of these parts and equipments inside Iraq".

3. In the event of any conflict between the provisions of these procedures and the procedures, guidelines and points of understanding previously adopted by the Committee to implement the provisions of Security Council resolution 986 (1995) and subsequent resolutions approved by the Council in its furtherance, including those attached to the letter of the Chairman of the Committee to the Security Council (S/1996/636), the provisions of the present procedures will prevail.

4. The Committee will select, upon the recommendation of the Office of the Iraq Programme, a group of experts to work in the Office of the Iraq Programme. The group of experts will have the mandate to speedily approve applications for oil spare parts and equipment. These experts, who will be under contract with the United Nations, will report to the Executive Director of the Iraq Programme. The group of experts will initially consist of three customs experts, one oil industry expert and one dual-use expert. Required expertise and technical support will be made available to the group by the independent oil inspection agents, the monitors of oil spare parts and equipment in Iraq and the oil overseers, as appropriate. Any changes in the composition of the group of experts will be recommended to the Committee by the Office of the Iraq Programme as necessary.

5. At the beginning of each phase, the Government of Iraq will prepare, in consultation with the Office of the Iraq Programme, lists of oil spare parts and equipment for each individual project in the oil sector, which will be implemented in accordance with the distribution plan for that phase, to be approved by the Secretary-General. Each list should specify spare parts and equipment related to a particular project in the oil sector. In the process of consultations referred to above, these lists will be reviewed by the United Nations Monitoring, Verification and Inspection Commission. Pursuant to paragraph 18 of resolution 1284 (1999), the lists of spare parts and equipment related to each individual project in the oil sector will subsequently be submitted to the Committee for approval, and the Office of the Iraq Programme will specify a time-frame within which the Committee is expected to approve the lists.

6. The list of items will become effective with the exception of any item or items whose inclusion on the list has been objected to in writing by one or more members of the Committee. Unless and until the concerned member or members of the Committee withdraw in writing their objection, applications containing such items will continue to be circulated to the Committee for its action in accordance with the applicable procedures.

7. Applications for the export of oil spare parts and equipment included in the lists approved by the Committee and to be financed from the Iraq account shall be forwarded to the Office of the Iraq Programme at the request of the Government of Iraq by the exporting State for review and approval by the group of experts. The application must indicate that the exporter requests payment from the Iraq account.

8. All applications for oil spare parts and equipment will be submitted to the group of experts in the Office of the Iraq Programme. Applications for oil spare parts

and equipment that are included on the lists approved by the Committee will be reviewed exclusively by the group of experts on behalf of the Committee to determine whether the contract meets all the criteria established by the Committee. Applications for oil spare parts and equipment that do not form part of the lists approved by the Committee pursuant to paragraph 18 of resolution 1284 (1999) will be submitted to the Committee for its consideration in accordance with standard procedures.

9. An application must meet the following criteria in order to be approved and considered eligible for payment from the Iraq account:

(a) The application relates to spare parts and equipment included in the lists approved by the Committee and the distribution plan approved by the Secretary-General;

(b) The description of the item(s) in the application is not such as would indicate that, notwithstanding the inclusion of an item on the list approved by the Committee, the item or a component of that item might be subject to the provisions of resolution 1051 (1996), such that its supply would require the approval of the Committee;

(c) The price and quality of the oil spare parts or equipment quoted in the application falls within the range considered reasonable by the group of experts;

(d) The application form has been correctly completed and all relevant details have been submitted with the application, such as correct entry point, method of payment and end-user;

(e) There is no indication that the contractual arrangement significantly deviates from normal commercial practice.

10. In order to verify that the conditions set forth in paragraph 9 above are met, the group of experts acting through the Office of the Iraq Programme may request additional information from the exporting State or from the Government of Iraq.

11. Should the group of experts conclude that the conditions set forth in paragraph 9 are met, the application will be considered to have been approved and the exporter will be eligible for payment from the Iraq account on the date that three members of the group, including one customs expert, the oil industry expert and the dual-use expert, so inform the Executive Director in writing. The Executive Director, guided by the provisions of paragraph 4 of Security Council resolution 1175 (1998), will then inform in writing the exporting State and other parties concerned that the application has been approved and that the exporter is eligible for payment from the Iraq account.

12. For the purposes of paragraphs 35 to 37 of the procedures of the Committee contained in document S/1996/636, the letter of the Executive Director of the Iraq Programme referred to in paragraph 11 above will be deemed equivalent to a letter of approval by the Committee stating that an exporter is eligible for payment from the Iraq account. No payments can be made until the independent inspection agents provide the Secretary-General with authenticated confirmation that the exported goods concerned have arrived in Iraq.

13. A letter of the Executive Director stating that an exporter is eligible for payment from the Iraq account shall be valid for a 180-day period. If the notification indicates that a validity period greater than 180 days is required because the items to be exported to Iraq will require a lengthy production time and the group of experts verify that a longer validity period is justified, the Executive Director of the Iraq Programme may specify a validity period of up to 24 months, as required.

14. If, after the lists of oil spare parts and equipment have been established, an approval letter for an application previously approved by the Committee that relates to items on the lists needs to be amended or extended, and the group of experts confirms that the contract in question meets the conditions set out in paragraph 9 of these procedures, this letter of approval may be replaced by a letter of the Executive Director of the Iraq Programme informing the exporting State and other parties concerned that the application has been approved and that the exporter is eligible for payment from the Iraq account.

15. On a weekly basis, the Office of the Iraq Programme will submit a comprehensive report to the Committee on the applications for oil spare parts and equipment that have been reviewed and approved by the group of experts.

16. Up to and including the day six months after the group of experts established pursuant to paragraph 4 of these procedures is appointed, any Committee member may call for an urgent meeting of the Committee to consider revising or revoking these procedures.

Pending a decision by the Committee, these procedures for the approval of oil spare parts and equipment will be suspended for 15 working days, and standard procedures will apply. If after 15 working days no revision or revocation of these procedures has taken place, they will be reinstated. The suspension of these procedures can happen no more than one time during the six-month period.

17. The procedures described in this paragraph will supersede those in paragraph 16 when the time period described in paragraph 16 expires. After that date, any Committee member may call for an urgent meeting of the Committee to consider revising or revoking these procedures. The Committee will keep these procedures under review and, in the light of experience, will amend them as appropriate. If necessary, the Committee may suspend the procedures for the approval of oil spare parts and equipment, and standard procedures will apply.